IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	
	)	No. 61105-4-I
VIVECA SANAI,	)	
Appellant,	)	DIVISION ONE
	)	
and	)	UNPUBLISHED OPINION
	)	
SASSAN SANAI,	)	
	)	
Respondent.	)	FILED: June 15, 2009

GROSSE, J.—Viveca Sanai appeals the trial court's order addressing posttrial matters in the ongoing litigation of the dissolution of her marriage to Sassan Sanai. Because Viveca fails to establish grounds to revisit issues settled in a prior appeal of the dissolution, and because she fails to demonstrate error in the trial court's order disqualifying her son, Fredric Sanai, from serving as her attorney, we affirm.

FACTS

In April 2002, the superior court signed orders dissolving the marriage of Sassan and Viveca Sanai and dividing their property. In December 2003, this court filed an unpublished decision affirming in part and reversing in part, and imposing sanctions against Viveca for abusing the appellate process.[1] Our Supreme Court denied Viveca's petition for review in November 2004 and this court filed the mandate in December 2004.

[1] Sanai v. Sanai, No. 50374-0-I, noted at 119 Wn. App. 1053, 2003 WL 22995693.

On December 7, 2007, the superior court entered an order resolving posttrial financial matters. Viveca filed a notice of appeal seeking review of the December 7, 2007 order and "pursuant to RAP 2.4(b), all prior non-appealable orders prejudicial to Viveca Sanai."[2]

ANALYSIS

Although Viveca's brief refers to a number of claimed errors, she supports only three claims of error with argument, specifically, the appointment of Philip Maxeiner as a judicial referee, the trial court's order directing Maxeiner to file a tax return, and the trial court's order disqualifying Fredric Sanai, Sassan and Viveca's son, from acting as Viveca's attorney.[3] Viveca raised these first two claims in her prior appeal. We rejected her challenge to Maxeiner's appointment stating, "The trial court is granted broad authority to appoint receivers and referees to supervise the sale of properties and distribution of funds."[4] Viveca now claims that this holding is error because "[t]he trial court has no such powers, and the appointment violated Viveca's due process rights under the Fourteenth Amendment."[5] In the prior appeal we also rejected Viveca's unsupported argument that the trial court lacked jurisdiction to order the filing of the joint tax return prepared by Maxeiner, holding that "it is within the trial court's

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[2] Clerk's Papers at 4.

[3] Failure to provide argument and citation to authority in support of an assignment of error, as required under RAP 10.3, precludes appellate consideration of an alleged error. Hollis v. Garwall, Inc., 137 Wn.2d 683, 689 n.4, 974 P.2d 836 (1999); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

[4] Sanai, 2003 WL 22995693, at *4.

[5] Opening Brief of Appellant at 14.

equitable power to require parties to file a joint tax return."[6] She now claims to have support for her argument.

"Where there has been a determination of the applicable law in a prior appeal, the law of the case doctrine ordinarily precludes redeciding the same legal issues in a subsequent appeal."[7] Reconsideration may be granted to avoid a manifest injustice or where the prior appeal is clearly erroneous.[8]

Given Viveca's admission that she did not object to Maxeiner's appointment before the trial court, her attempt to recast her challenge to Maxeiner's appointment in due process terms is unavailing. And her citation to an inapposite case published in 1990 does not call into question our holding regarding the tax return.[9] Because Viveca fails to establish that our prior opinion was clearly erroneous or that following it will result in a manifest injustice, we need not revisit these matters.

Viveca's final claim challenges the trial court's order disqualifying her attorney, Fredric Sanai. Fredric filed a notice of appearance as attorney for Viveca in the trial court in June 2002, while the initial appeal was pending. Sassan's August 2002 motion to disqualify Fredric was granted by the trial court in September 2002. Viveca's attempts to obtain interlocutory review were unsuccessful. Now that the trial court has entered a final judgment, we address

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[6] Sanai, 2003 WL 22995693, at *4.
[7] Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988).
[8] RAP 2.5(c)(2); Folsom, 111 Wn.2d at 264.
[9] In re Marriage of Haugh, 58 Wn. App. 1, 9-10, 790 P.2d 1266 (1990) (trial court lacked authority to order adjustment of parties' future tax responsibilities in a manner contrary to federal law).

the merits of her claim.

Viveca contends that the trial court abused her constitutional due process right to counsel of her choice. In particular, she contends that the grounds claimed by Sassan in his motion to disqualify Fredric were "absurd"[10] because Fredric had not been called as a witness at trial and the fact that his interests conflicted with Sassan's did not disqualify Fredric from serving as her attorney.

When a motion to disqualify is based on the ground that the attorney is likely to be a necessary witness, we review a trial court's order disqualifying the attorney for abuse of discretion, recognizing that courts should be reluctant to disqualify an attorney absent compelling circumstances.[11]

The record demonstrates such compelling circumstances here. Viveca does not dispute the facts Sassan asserted in his motion to disqualify Fredric: Fredric sent Sassan's attorney a letter claiming to have evidence implicating Sassan in criminal activity and exposing him to civil liability to third parties and threatening to release that information unless Sassan agreed to settle the litigation and "fairly compensate" Viveca;[12] Sassan's attorney filed a bar complaint against Fredric on Sassan's behalf based on that letter; Fredric signed an affidavit in the dissolution proceedings in December 2000 and obtained a declaration from a purported expert in domestic abuse regarding the relationship between Sassan and Viveca; Fredric was involved in towing away a car

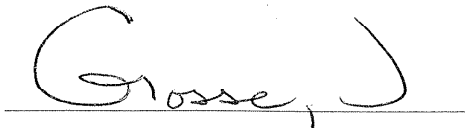
[10] Opening Brief of Appellant at 26.
[11] Public Util. Dist. No. 1 of Klickitat County v. Int'l Ins. Co., 124 Wn.2d 789, 812, 881 P.2d 1020 (1994).
[12] Clerk's Papers at 2020.

addressed in the dissolution decree; Fredric investigated the ownership of the guns addressed in the dissolution decree; Fredric was acting at the direction of Cyrus Sanai, another attorney son of Sassan and Viveca who had been previously disqualified from the case; and Fredric had personal interests in property in dispute in the dissolution and had filed lawsuits against Sassan claiming millions of dollars in damages in California and King County.

At the time of the motion, Viveca's appeal seeking a new trial was pending before this court, the judicial referee had not completed the property sales or distributed the remaining funds, and the parties continued to litigate various issues before the trial court. In this context, the trial court did not abuse its discretion by granting the motion to disqualify Fredric.

Sassan requests attorney fees under RAP 18.9(a) arguing that Viveca's appeal is frivolous and Viveca is intransigent. "A frivolous appeal is one which, when all doubts are resolved in favor of the appellant, is so devoid of merit that there is no chance of reversal."[13] Here, there is no merit to Viveca's appeal and we award attorney fees in favor of Sassan. A commissioner of the court will determine the amount of the award upon compliance with RAP 18.1.

Affirmed.



WE CONCUR:

[13] Fidelity Mort. Corp. v. Seattle Times Co., 131 Wn. App. 462, 473, 128 P.3d 621 (2005) (citing Streater v. White, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980)).

Edmonds, J. Dwyer, A.C.J.